

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-217212

**DATE:** December 14, 1984

**MATTER OF:** Autoclave Engineers, Inc.

**DIGEST:**

Where offeror excludes no end products from Buy American certificate in bid and does not otherwise indicate that it is offering anything other than domestic end products, acceptance of offer results in obligation of offeror to furnish domestic end products. Compliance with obligation is matter of contract administration, which has no effect on the validity of contract award, and is not for consideration under GAO bid protest function.

Autoclave Engineers, Inc. (Autoclave), protests the award of subcontract No. 9-L54-5210-1, for hot isostatic presses, to ASEA Pressure Systems, Inc. (ASEA), by the University of California (UC), a prime management contractor for the United States Department of Energy (DOE). Autoclave asserts that the contract was awarded in violation of the Buy American Act.

We dismiss the protest.

Autoclave was notified by UC on October 3, 1984, of UC's determination to award to ASEA. Autoclave protested to UC alleging, in part, that ASEA did not comply with the Buy American Act requirement that the end product being procured consist of components containing at least 50 percent United States goods. In response to this protest, UC obtained and examined data from ASEA and concluded that ASEA was offering a domestic source end product under the Buy American Act definition. Accordingly, UC denied Autoclave's protest. Autoclave protested to our Office alleging that, while it has not seen the ASEA data which was relied upon by UC, it believes that a detailed statement supported by auditable data would establish that ASEA is offering to supply a non-United States end product within the meaning of the Buy American Act.

Autoclave recognizes that our Office normally will not consider protests which challenge the awardee's intended compliance with a representation in its Buy American

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certificate that domestic end products will be supplied, because this constitutes a matter of contract administration. Metermod Instrument Corporation, B-211907, Apr. 19, 1984, 84-1 C.P.D. ¶ 448; Rockwood Systems Corporation, B-206872, Apr. 7, 1982, 82-1 C.P.D. ¶ 326.

However, Autoclave requests that we reconsider our decisions in this respect. Autoclave points out that in cases of Buy American Act "violations," the only forum available is a federal court and argues that there is no reason that the Comptroller General should not have coextensive jurisdiction over such matters. We disagree.

The Buy American Act does not prohibit, as Autoclave assumes, agency procurement of foreign end products, or require the disqualification of a bidder who offers a foreign end product. Rather, the act and implementing regulations provide a preference for domestic items which is established through the use of an evaluation differential (in most cases, 6 percent of the price of the foreign item) which is added to the price of the foreign item. See American Medical Instrument Corporation, B-212569; B-213262, Jan. 23, 1984, 84-1 C.P.D. ¶ 95.

As Autoclave recognizes, our Office has consistently declined to consider protests that an awardee will not comply with its obligations under a Buy American certificate. This is because where, as here, a bidder or offeror excludes no end products from the Buy American certificate in its bid or offer and does not indicate that it is offering anything other than domestic end products, the acceptance of the offer results in an obligation on the part of the bidder or offeror to furnish domestic end products. Compliance with that obligation is a matter of contract administration which has no effect on the validity of the contract award. 50 Comp. Gen. 697 (1971); LePrix Electrical Distributors, Ltd., B-212340.3, Oct. 28, 1983, 83-2 C.P.D. ¶ 513. Accordingly, we have explicitly held that this issue is not for resolution under our Bid Protest Procedures, 4 C.F.R. part 21 (1984), which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory and other legal requirements rather than for considering postaward performance or administrative matters. Nicolet Technology Corp., B-192895, Sept. 28, 1978, 78-2 C.P.D. ¶ 244; Gulf and Western Manufacturing Co., B-195804, Sept. 6, 1979, 79-2 C.P.D. ¶ 181.

We believe that the standard in these decisions is well founded. The fact that an issue may be reviewable in federal courts provides no basis for our Office to extend its consideration to a matter which is not properly within our jurisdiction under our Bid Protest Procedures.

We dismiss the protest.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel